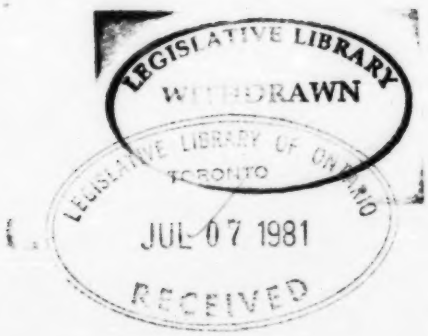
Alberta Women's Bureau
INFORMATION

CHILDREN: CUSTODY AND ACCESS



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Alberta
WOMEN'S BUREAU

CHILDREN: CUSTODY AND ACCESS

Custody

What is custody?

Whoever has custody of children is responsible for their care and control and has the right to decide how they will be brought up and educated.

Who has the right to custody?

- Married parents: The father and mother of a child have joint custody--that is, they share custody--until such time as the parents sign an agreement changing this and/or the court changes this arrangement.

- Unmarried parents: The mother has the best claim to custody and has the care and control of the child unless the court orders otherwise.

Some instances where custody can be decided by the courts are:

(a) The parents decide to live apart and cannot agree on who shall have the children.

(b) One of the parents has petitioned for divorce.

(c) Both parents give up the child.

(d) Foster parent and birth parent both want the child.

Kinds of custody

Usually one parent will have custody and the other parent will have visiting rights (called access).

It is possible for custody to be divided so that each parent has custody for a specified portion of the year.

In an emergency

It sometimes happens that before custody can be decided by the court, one parent will try to 'kidnap' the children. If you suspect that your spouse is about to take your children out of the province or country without your permission, it is possible, with the help of a lawyer, to obtain a Supreme Court Order within a matter of hours to prevent this.

Determining custody

The courts will not automatically award custody of children to either parent, no matter who was 'at fault' in the marriage breakdown.

THE MOST IMPORTANT THING THE COURTS WILL TAKE INTO CONSIDERATION IS THE WELFARE AND HAPPINESS OF THE CHILDREN.

The judge must ask, "What is in the best interests of the children?" However, there are several 'rules of thumb' to aid the courts, especially when both parents appear equal, but these need not be followed:

(a) Very young children go to the mother if she is better able to care for them.

(b) Sometimes it is thought that older boys should be with the father and older girls should be with the mother.

(c) Whenever possible, courts prefer to keep brothers and sisters together.

Conduct of parents

According to the law, the conduct of the parents must be considered. The type of conduct judges will consider covers a wide range of activities and depends on the judge. A liberal view of what is relevant is that conduct which has already affected, or is likely to affect, the welfare of the child. Courts have considered such things as: a parent leaving the other spouse without good reason; not taking any interest in or refusing to support the child; kidnapping the child; and/or living in an immoral environment.

Financial standing of parents

The financial position of the parents is not any more important than any other consideration. If it is in the best interests of the children that their penniless mother look after them, she will gain custody. The father must then contribute to the support of the children.

The father of an illegitimate child may also be ordered to pay for the child's support.

Stability

The continuation of the child's existing relationships is an important consideration.

Lifestyle

The court may consider such matters as church attendance, working parents, cultural background, language, intellectual and other stimulation.

Changing custody orders

Generally an order with respect to custody is never final and can be varied at any time if there has been a change in the circumstances of either parent. Application should be made to the court which made the original custody order.

Access

The meaning of access

Access means visiting rights.

A parent's right to access

A child has a right to see both parents. Only special reasons justify denying access to a parent. The court, however, must always consider what is best for the children. The parent with access must make the effort to visit. The parent with custody may move as far away as he or she pleases, unless the court has ordered otherwise, as it does when there is an order of one day per week.

Reasonable access

The court usually orders the parent with custody to allow the other parent reasonable access. The parents can then make arrangements between themselves. Usually, reasonable access means about one eight-hour day per week.

Special kinds of access

The judge may order access restricted or conditions imposed on it, e.g., parent must be sober when children are called for and delivered home.

Disputes

Once a judge has awarded one parent access, the other parent cannot withhold it. Any attempt to do so could be considered contempt of court.

Changing the order

As with custody matters, access orders can always be changed by the courts if the arrangement is not satisfactory or parents cannot agree on what reasonable access should be.

Access and maintenance

It is not legal to withhold access in order to collect child support unless the court has ordered it to be that way.

Illegitimate children

The father of an illegitimate child has the right to apply to the courts for custody or access.

(This summary has been prepared by a law student, not a lawyer. While every effort has been made to make the advice up-to-date and correct, we cannot accept legal responsibility for any errors or omissions that may exist.)